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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,138	06/23/2003	Robert Lammle	3080-5578US	1579
24247	7590	11/02/2004	EXAMINER	
TRASK BRITT P.O. BOX 2550 SALT LAKE CITY, UT 84110			TRAIL, ALLYSON NEEL	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,138

Applicant(s)

LAMMLE, ROBERT

Examiner

Allyson N Trail

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/19/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Amendment

1. Receipt is acknowledged of the Amendment filed August 9, 2004.

Drawings

2. Figure 2 is objected to because the figure is too dark and is difficult to read. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Remarks

3. In the previous office action dated May 21, 2004, claims 1, 9, and 21-23 were rejected under 35 U.S.C. 102(b) and claims 2-8, 10-20, and 24 were rejected under 35 U.S.C. 103(a). The current amendment has further limited independent claims 1, 9, 11, and 15.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9, 11-17, 19, and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung (2003/0006878) in view of Swartz et al (2003/0132298).

Chung teaches the following in regards to claims 1, 11, 13, and 14:

Chung teaches a method for providing pharmaceutical information to a patient. The method of providing information includes dispensing a pharmaceutical product having an electronically identifiable tag associated with the product.

"In filling the prescription, a smart tag reader at the pharmacy or other dispenser reads 410 the prescription smart tag and produces or generates 410 a pick list from which a pharmacist or other dispensing agent can fill the prescription. The pharmacy fills the prescription and labels 420 each item dispensed with a smart tag in which is stored the medication and prescription information. The pharmacy also applies a conventional human-readable printed label which may also include bar-coded information." (Paragraph 0141).

"When the prescription is filled, the medication smart tag and prescription smart tag are read and cross checked 430 for completeness and accuracy. Such reader maybe linked to access 440 a relational database for comparing the information read from the smart tags with a medical database for verifying and/or identifying allergy, drug interaction, diagnostic or other information." (Paragraph 0142).

Chung teaches the following in regards to claim 12:

"The patient may be provided an opportunity to confirm the correctness of his prescriptions and/or receive assistance in the proper administration thereof. To that end, a patient may have a personal smart tag reading device, sometimes referred to as a MEDI-TRAKKER.TM. device by Avante International Technology, that at least reads the medication and prescription smart tags and compares or cross checks 450 the information read therefrom to provide an indication of whether the smart tags match or

do not match. This permits the patient to independently confirm that the medication and prescription smart tags indicate that the proper medication was dispensed.” (Paragraph 0144).

Chung teaches the following in regards to claim 15:

“Alternatively, display 50 may be a touch screen display 50 that provides an easy to use and convenient combined display 50 and input means 52 through which information may be provided and information and requests may be received.” (Paragraph 0086).

Chung teaches the following in regards to claims 16, 19, and 23:

“Suitable relational database software include ACCESS and SQL Server database software which runs on conventional PC processors with standard operating systems, such as Windows-NT, both available from Microsoft Corporation of Redmond, Wash., as well as the ORACLE, SYBASE and INFORMIX database software. Preferably the database software is "Internet-ready" in that it includes features facilitating connection to and communication of information via the Internet.” (Paragraph 0108).

Chung teaches the following in regards to claim 17:

“Desirably, processed information and/or transactional information should be available in human readable form, such as by display on a computer monitor or by print out by a computer printer, both of which may be conventional.” (Paragraph 0093).

“In a simplified database, database 1240' includes, for example, lists 1242, 1246 and 1248. This database arrangement may be advantageous where the database is

stored in a local processor and/or a smart tag reader/writer where available memory capacity may be more limited than in another processor. In either a complete or simplified database, information relating to each writing of information to each smart tag is communicated to a processor in real time or delayed, and may be periodic or aperiodic. Information may be communicated by any of the means described as well as by manual communication, e.g., by transporting the smart tag reader/writer and/or local processor and/or computer media containing the information stored in such smart tag reader/writer and/or local processor to another processor.” (Paragraph 0107).

Teachings disclosing the limitations of claims 21 and 22 are found above. Specifically, Chung teaches a computer processor for accessing a database including information regarding prescriptions and medications. It is inherent for the computer processor to run on a software program.

Chung’s teachings above fail to teach audibly disclosing the stored pharmaceutical information to a patient.

Swartz et al teaches the following in regards to claims 1, 9, 21:

“In another preferred embodiment, the central host is programmed to inform customers that a selected item is a restricted item and cannot be purchased by the consumer at that time. For instance, in some states alcoholic beverages may not be sold on Sundays. Thus, if a consumer scans the product for purchase, the portable terminal will display a message or play an audible message conveying the prohibition. Similarly, if a customer who is below the minimum drinking age attempts to purchase an article of alcohol, they will be reminded of the drinking age and a notice will be provided

to the local service attendant upon an attempted payment that a person of unknown or insufficient age has attempted to buy an age restricted item.” (Paragraph 0178).

In view of Swartz et al's teachings, it would have been obvious to an artisan of ordinary skill in the art at the time the invention was made to combine Swartz et al's teachings of generating an audible message when scanning a product with Chung's teaching of disclosing medical product information to a patient when the product's tag has been read. Chung teaches producing an alarm (paragraph 0058) when the patient should be warned that the medication scanned is not for them. One would be motivated to include an audible message to patients regarding product information in order for patients to have a clear warning of dangerous medication interaction or side effect that the medication may cause.

6. Claims 2, 4-6, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung (2003/0006878) in combination with Swartz et al (2003/0132298) and in further view of Catan (2002/0143860).

Chung's teachings in combination with the teachings of Swartz et al are discussed above. The combination fails to teach prompting the user with a first message, wherein the message provides the user with an interactive choice of accepting or declining information about a scanned product.

Catan teaches the following in regards to claim 2:

“Referring to FIG. 16, yet another sequence begins with the acquisition of MRL device T data at S70. The data is stored at S72 on the reader 100/120. Then, when the reader 100/120 is connected, the reader 100/120 connects to the network server

140 and transmits the stored data at S74. At S76, the user is prompted to accept a message from the network server 140, and upon acceptance, the message is delivered at S78 concurrently or at a later time.” (Pages 13 and 14, paragraph 0135).

Catan teaches the following in regards to claim 4:

Figure 1 shows the portable reader 100. The portable reader is an electronic input device.

Catan teaches the following in regards to claim 5:

Figure 1 further shows the electronic input device 100, comprising a keyboard.

Catan teaches the following in regards to claim 6:

“The identification of discriminants is a well-developed technology in itself. A very simple approach is to generate a histogram that indicates the terms that appear most often in the returned records and to allow the user to select from among the terms with the highest frequency.” (Page 16, paragraph 0153).

Catan teaches the following in regards to claim 10:

Figure 1 shows the portable reader 100. The portable reader includes a display where messages are shown.

In view of Catan’s teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Catan’s method of prompting the user with a message in order to receive a command to disclose product information. The combination of Chung and Swartz et al’s teachings above disclose a method for generating an audible message warning a patient of possible medication interactions. Both Catan and the combination of Chung and Swartz et al teach offering beneficial

information to a user. Although Cantan's invention does not specifically deal with pharmaceutical products, the invention is geared towards a label reader. One would be motivated to use Cantan's method of waiting for a user command in order to avoid wasting the time of a user who is not in need of the product information.

7. Claims 7, 20, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung (2003/0006878) in combination with Swartz et al (2003/0132298) and in further view of Stewart (2003/0183683).

Chung's teachings in combination with the teachings of Swartz et al are discussed above. The combination fails to teach recording an electronic signature of the patient.

Stewart teaches the following in regards to claims 7, 20, and 24:

"A digital signature capture means or signature pad 510 generally well known to those skilled in the art is coupled to the computer means 504 and is used to capture the signature of the donor, collector, or other personnel as required in accordance with the specific established requirements specified by local, state, federal or other health in regulatory agencies."

In view of Stewart's teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to use Stewart's digital signature capturing device in combination with the teachings of Chung and Swartz et al. One would be motivated to additionally include an electronic signature capturing device in order to authenticate the patient before administering the prescription.

8. Claims 3, 8, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung (2003/0006878) in combination with Swartz et al (2003/0132298) and with Catan (2002/0143860) and in further view of Kaafarani et al (2004/0078237).

Chung's teachings in combination with the teachings of Swartz et al and with Catan's teachings are discussed above. The combination fails to allow the patient the interaction option of speaking to the pharmacist.

Kaafarani et al teaches the following in regards to claims 3, 8, and 18:

"Still further embodiments provide the patient an optional step of dialing direct from the module to speak with a customer service representative or, if necessary, to speak with a pharmacist or pharmacy technician."

In view of Kaafarani et al's teachings it would have been obvious to one of ordinary skill in the art at the time the invention was made to give the patient the option of speaking to the pharmacist. Although the automatic or commanded information is beneficial, the patient may additionally have questions for the pharmacist. One would be motivated to include the option of speaking to the pharmacist for the above reason.

Response to Arguments

9. Applicant's arguments found on pages 1 and 2 of the remarks, filed August 9, 2004, with respect to the rejections of claims 1, 9, and 21-23 have been fully considered. In view of the current amendment, the examiner agrees with the applicant's argument regarding Uecker et al failing to teach the stored pharmaceutical information being audibly disclosed. However, the examiner believes that Chung in combination with Swartz et al does teach the a method of providing pharmaceutical information to a

patient via an audible message. Therefore, upon further consideration, a new grounds of rejection is made in view of Chung and in further view of Swartz et al.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Allyson N. Trail* whose telephone number is (571) 272-2406. The examiner can normally be reached between the hours of 7:30AM to 4:00PM Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571) 272-2398. The fax phone number for this Group is (703) 872-9306.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [allyson.trail@uspto.gov].

All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Allyson N. Trail
Patent Examiner
Art Unit 2876
November 1, 2004

Jared J. Fureman
JARED J. FUREMAN
PRIMARY EXAMINER